UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

CHARLES V. VATTEROTT CONSTRUCTION COMPANY AND D.L. DESIGN, INC.,)))
Plaintiffs,)
vs.) Case No.: 4:09CV00303 ERW
ESTEEM CUSTOM HOMES, LLP, NICHOLAS G. SIGMUND, AND LT DESIGNS, LLC,))))
Defendants.))

DEFENDANTS ESTEEM CUSTOM HOMES, LLP AND NICHOLAS SIGMUND'S MOTION TO DISMISS AND FOR SUBSTITUTION OF PARTY

COME NOW Defendants Esteem Custom Homes, LLP and Nicholas Sigmund, by and through the undersigned counsel, and in support of their Motion to Dismiss and For Substitution of Party state as follows:

1. Plaintiffs' First Amended Complaint alleges that Defendants Esteem Custom Homes, LLP and/or Nicholas Sigmund helped to design and then constructed and sold a home located at 418 Ancestry Drive, St. Peters, Missouri 63376 to Arthur and Nyla Sanderson in or around 2004. (See Plaintiffs' First Amended Complaint [Doc. 48] ¶¶ 18-21). Plaintiffs' First Amended Complaint alleges that in doing so, Esteem Custom Homes, LLP and/or Nicholas Sigmund infringed upon the copyrights allegedly owned and/or leased by Plaintiffs in the residential plan and design of the "Jefferson" (see Plaintiffs' First Amended Complaint [Doc. 48]

- ¶¶ 28-37) and interfered with an alleged ongoing and contractual business relationship with the Sandersons. (See Plaintiffs' First Amended Complaint [Doc. 48] ¶¶ 38-42).
- 2. Plaintiffs' First Amended Complaint further alleges that Esteem Custom Homes, LLP was deactivated by the Missouri Secretary of State's Office on January 6, 2006 and Nicholas Sigmund conducts business as Esteem Custom Homes. (See Plaintiffs' First Amended Complaint [Doc. 48] ¶¶ 3, 4).
- 3. The Residential Sale Contract with the Sandersons for the home located at 418 Ancestry Drive, St. Peters, Missouri, 63376 and the Settlement Statement show that the entity that sold the home to them was Esteem Homes, Inc, not Esteem Custom Homes, LLP or Nicholas Sigmund. (*See* Exhibit 1, the Resident Sale Contract, and Exhibit 2, the Settlement Statement, attached hereto and incorporated herein).
- 4. The plans from which the home located at 418 Ancestry Drive, St. Peters, Missouri 63376 was built do not provide that they were prepared for either Esteem Custom Homes, LLP or Nicholas Sigmund. (See Exhibit 3, the "Henry" architectural plans attached hereto and incorporated herein).
- 5. Neither Defendant Esteem Custom Homes, LLP nor Nicholas Sigmund in his personal capacity was the party that helped to design and then constructed and sold the subject home to the Sandersons.
- 6. Defendants Esteem Custom Homes, LLP and Nicholas Sigmund are not proper party defendants in this action.
 - 7. Esteem Homes, Inc. is the property party defendant in this action.

WHEREFORE, Defendants Esteem Custom Homes, LLP and Nicholas Sigmund move this Court to enter an order dismissing Esteem Custom Homes, LLP and Nicholas Sigmund as party defendants and substituting Esteem Homes, Inc. as a party defendant in this action and for such other relief as this Court deems just and proper under the circumstances.

/s/William S. Thomas

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I hereby certify that a copy of the foregoing filed electronically with the Clerk of the Court this 25 day of 2010 to be served by operation of the Court's electronic filing system upon the following:

Mr. Nelson Nolte Attorney for Plaintiff 12412 Powerscourt Drive, Suite 200 St. Louis, Missouri 63131-3615

Ms. Annette P. Heller Attorney for Defendant LT Designs 14323 South Outer Forty Drive, Suite 512 S Town & Country, Missouri 63017

/s/ William S. Thomas